

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEITH JOHNSON, COLBY GOROG,
JOSHUA FLINT, LOUIS ROBINSON,
JAMES DUONG, FERNANDO URIZA,
MICHAEL TWOMEY, and JESSICA
CALKINS, individually and on behalf
of all others similarly situated,

Plaintiffs,

- versus -

ELON MUSK, SPACE EXPLORATION
TECHNOLOGIES CORP dba SPACEX,
TESLA, INC., THE BORING COMPANY,
DOGECOIN FOUNDATION, INC.,
BILLY MARKUS, JACKSON PALMER,
DOGECOIN DEVELOPERS class
representative ROSS NICHOLL and
DOGE ARMY class representative MATT
WALLACE, individually and on behalf of
all others similarly situated,

Defendants.

Case No.: 1:22-cv-5037-AKH

**PLAINTIFFS' MOTION FOR
LEAVE TO FILE SECOND
AMENDED CLASS ACTION
COMPLAINT**

Pursuant to Rule 15 of the Federal Rules of Civil Procedure, Plaintiffs Keith Johnson, Colby Gorog, Joshua Flint, Louis Robinson, James Duong, Fernando Uriza, Michael Twomey, and Jessica Calkins, individually and on behalf of all others similarly situated (collectively, “Plaintiffs”), through undersigned counsel, respectfully move the Court for leave to file the attached *Second Amended Class Action Complaint* (“Second Amended Complaint”—see **Exhibit “1”** appended) and attached Plaintiff certifications (see **Exhibits “3 - 7”** appended) as required by the Private Securities Litigation Reform Act (PSLRA).

Rule 15 provides that “a party may amend its pleading [with] the court’s leave” and that “[t]he court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). Plaintiffs seek leave to amend prior to Defendants’ appearance. Allowing Plaintiffs to file the Second Amended Complaint would serve justice and promote judicial efficiency. Further, there would be no substantial or undue prejudice, bad faith, undue delay, or futility.

Through the Second Amended Complaint, Plaintiffs seek to accomplish the following objectives:

- To simplify the pleadings to conform to the requirements of Fed. R. Civ. P. 8
- To add new information alleging relevant, continuing misconduct by Defendant Elon Musk
- To add new, relevant information concerning SEC Commissioner Gary Gensler’s announcement of September 8, 2022, clarifying the status of cryptocurrency as a security instrument
- To replace one Plaintiff and remove four others
- To dismiss seven of the ten currently named Defendants

Defendants also seek leave to amend in order to file the certifications required by PSLRA at 15 U.S.C. § 77z-1(a)(2)(A). These certifications—which require each representative plaintiff in a class action to affirm that he is not a professional plaintiff, and to set forth his transactions in the securities subject to the complaint—dispose of threshold matters of standing, without which plaintiffs cannot move for class certification.

Because a clear preference exists for cases to be adjudicated on the merits, because the interests of justice require it, and for the reasons stated in the attached memorandum in support,

Plaintiffs respectfully request that the Court grant them leave to amend their Second Amended Class Action Complaint.

Dated: December 5, 2022

Respectfully Submitted,

By: /s/ Evan Spencer
Evan Spencer
Evan Spencer Law, PLLC
305 Broadway, 7th Floor
New York, NY 10007
Tel. 917.547.4665
Evan@EvanSpencerLaw.com

/s/ Santos A. Perez
Santos A. Perez, Esq.
Pro Hac Vice
The Perez Law Firm
151 W. Passaic St.
Rochelle Park, NJ 07662
Tel. 201.875.2266
sperez@NJLawCounsel.com

ATTORNEY FOR PLAINTIFFS
AND THE CLASS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5th day of December 2022, a true and correct copy of the above and foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system giving notice to all parties in this action.

s/Evan Spencer
Evan Spencer